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OFFICE OF PETITIONS

In re Tyson-Quah : DECISION ON REQUEST
Patent No. 7,523,054 : FOR
Issue Date: April 21, 2009 : RECONSIDERATION OF
Application No. 10/007,179 : PATENT TERM ADJUSTMENT
Filed: October 22, 2001 : and
Atty Docket No. 32052195US6 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on June 22, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred seventy-seven (1677) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred seventy-seven (1677) days is **GRANTED to the extent indicated herein.**

Patentee asserts the correct patent term adjustment is 1,677 days.

When calculating the revised patent term adjustment to appear on the patent, the Office determined the amount of "A delay" was 1,784 days, which is the sum of 1,548 days of day under 37 CFR 1.702(a)(1) and 236 days of delay under 37 CFR 1.703(a)(6). Patentee asserts the period of A delay is 1,548 days and does not address the 236 day adjustment.

37 CFR 1.703(a)(6) states,

[The patent term adjustment includes the] number of days, if any, in the period beginning on the day after

the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued.

The instant application went abandoned for failure to timely reply to the Notice of Allowance mailed December 14, 2007. A decision reviving the application and accepting the delayed payment of the issue fee was mailed March 11, 2009. In other words, all of the outstanding requirements for issuance of a patent were satisfied on March 11, 2009. The patent issued on April 21, 2009, within four months of March 11, 2009. Therefore, an increase of 236 days of delay under 37 CFR 1.703(a)(6) is unwarranted.

In view of the prior discussion, the Office agrees with patentee's assertion the period of A delay is 1,548.

The Office concurs with patentee's calculation of the B delay period (beginning on October 23, 2004 and ending on April 21, 2009) and with patentee's determination of the number of overlapping days between A and B delay (beginning on October 23, 2004 and ending on March 19, 2007).

Patentee agrees with the Office's prior determination the period of delay under 35 U.S.C. 154(b)(2)(C) ("Applicant delay") is 635 days. However, a review of the record indicates the period of Application delay is 467 days.

The 635 day reduction included three periods of reduction based on conduct that took place after the Office mailed a Notice of Allowance on December 14, 2007. The three periods of reduction included a 329 day reduction under 37 CFR 1.704(c)(3), a 45 day reduction under 37 CFR 1.704(b), and a 120 day reduction under 37 CFR 1.704(c)(10).

The Office has determined the proper period of delay under 37 CFR 1.704(c)(3) is 326 days. To the extent any other Applicant delay accrued after the Office mailed the Notice of Allowance, the additional delay overlaps and is encompassed within the 326 day period of delay.

In view of the prior discussion, the period of Applicant delay is 467 days, which is the sum of 141 days of Applicant delay

incurred prior to the Office mailing a Notice of Allowance and 326 days incurred after the Office mailed a Notice of Allowance. As such, the patent term adjustment is 1,845 days, which is the sum of 1,548 days of A delay and 1,642 days of B delay reduced by 878 days of overlap between the periods of A delay and B delay and reduced by 467 days for Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand eight hundred forty-five (1845)** days.

Telephone inquiries should be directed to Senior Petitions Attorney Shirene Willis Brantley at (571) 272-3230.



Anthony Knight
Supervisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,523,054 B2

DATED : April 21, 2009

DRAFT

INVENTOR(S) : Tyson-Quah

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1149 days

Delete the phrase "by 1149 days" and insert – by 1845 days--